

**AGREEMENT BETWEEN**  
**THE GOVERNMENT OF THE UNITED STATES OF AMERICA**  
**AND**  
**THE GOVERNMENT OF THE REPUBLIC OF PANAMA**  
**FOR TAX COOPERATION AND THE EXCHANGE OF**  
**INFORMATION RELATING TO TAXES**

Whereas the Government of the United States of America and the Government of the Republic of Panama ("the Parties") wish to establish the terms and conditions governing tax cooperation and the exchange of information relating to taxes;

Now, therefore, the Parties have agreed as follows:

## **ARTICLE 1 SCOPE OF THE AGREEMENT**

The competent authorities of the Parties shall provide assistance through exchange of information that may be relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement, including information that may be relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation or prosecution of criminal tax matters.

## **ARTICLE 2 JURISDICTION**

Information shall be provided in accordance with this Agreement by the competent authority of the requested Party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a Party. However, a requested Party is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. For purposes of the preceding sentence, "authorities" includes all government agencies, political subdivisions, and local authorities.

## **ARTICLE 3 TAXES COVERED**

1. This Agreement shall apply to the following taxes imposed by the Parties:

- (a) in the case of the United States, all federal taxes; and
- (b) in the case of Panama, all national taxes.

2. This Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Parties so agree. The competent authority of each Party shall notify the other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

3. This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a Party.

#### **ARTICLE 4 DEFINITIONS**

1. In this Agreement the term:

(a) "competent authority" means, for the United States, the Secretary of the Treasury or his delegate, and for Panama, the Ministry of Economy and Finance or its delegate;

(b) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;

(c) "criminal laws" means all criminal laws designated as such under domestic law, irrespective of whether contained in the tax laws, the criminal code or other statutes;

(d) "information" means any fact, statement, document or record in whatever form;

(e) "information gathering measures" means judicial, regulatory, criminal, or administrative procedures enabling a requested Party to obtain and provide the information requested;

(f) "national" of a Party means:

i) any individual possessing the nationality or citizenship of that Party, and

ii) any legal person, partnership, or association deriving its status as such from the laws in force in that Party.

(g) "person" means a natural person, a company or any other body or group of persons;

(h) "requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;

(i) "requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party; and

(j) "tax" means any tax covered by this Agreement that is imposed at the national or federal level by a Party, not including customs duties.

2. For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "United States" means the territory of the United States of America, including Puerto Rico, the Virgin Islands, Guam, and any other United States possession or territory.

For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "Panama" means the territory of the Republic of Panama in accordance with international law and its domestic legislation.

3. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 9 of this Agreement, shall have the meaning which it has under the laws of the Party applying this Agreement, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **ARTICLE 5 EXCHANGE OF INFORMATION UPON REQUEST**

1. The competent authority of the requested Party shall provide upon request by the competent authority of the requesting Party information for the purposes referred to in Article 1 of this Agreement. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the competent authority of the requested Party shall take all relevant information gathering measures to provide the requesting Party with the information requested, notwithstanding that the requested Party may not, at that time, need such information for its own tax purposes. Privileges under the laws and practices of the requesting Party shall not apply in the execution of a request by the requested Party and such matters shall be reserved for resolution by the requesting Party.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall, to the extent allowable under its domestic laws,

- (a) specify the time and place for the taking of testimony or the production of books, papers, records, and other tangible property;
- (b) place the individual giving testimony or producing books, papers, records and other tangible property under oath;
- (c) secure original and unedited books, papers, and records, and other tangible property;
- (d) secure or produce true and correct copies of original and unedited books, papers and records;
- (e) determine the authenticity of books, papers, records and other tangible property produced, and provide authenticated copies of original records;
- (f) examine the individual producing books, papers, records and other tangible property regarding the purpose for which and the manner in which the item produced is or was maintained;
- (g) permit the competent authority of the requesting Party to provide written questions to which the individual producing books, papers, records and other tangible property is to respond regarding the items produced;
- (h) perform any other act not in violation of the laws or at variance with the administrative practice of the requested Party;
- (i) certify either that procedures requested by the competent authority of the requesting Party were followed or that the procedures requested could not be followed, with an explanation of the deviation and the reason therefor.

4. Each Party shall ensure that it has the authority, for the purposes referred to in Article 1 of this Agreement and subject to Article 2 of this Agreement, to obtain and provide, through its competent authority and upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity; and
- (b) information regarding the ownership of companies, partnerships, trusts, foundations, and other persons, including within

the constraints of Article 2 of this Agreement, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

However, notwithstanding subparagraph 4(b), this Agreement does not create an obligation on the Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information made by a Party shall be framed with the greatest degree of specificity possible. In all cases, such requests shall specify in writing the following:

- (a) the identity of the taxpayer whose tax or criminal liability is at issue;
- (b) the period of time with respect to which the information is requested;
- (c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
- (d) the matter under the requesting Party's tax law with respect to which the information is sought;
- (e) the reasons for believing that the information requested may be relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;
- (f) grounds for believing that the information requested is present in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (h) a statement as to whether the requesting Party would be able to obtain and provide the requested information if a similar request were made by the requested Party;
- (i) a statement that the requesting Party has pursued all reasonable means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

## ARTICLE 6 POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the requested Party may decline to assist:

(a) where the request is not made in conformity with this Agreement;

(b) where the requesting Party has not pursued all reasonable means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or

(c) where the disclosure of the information requested would be contrary to the public policy of the requested Party.

2. This Agreement shall not impose upon a Party any obligation:

(a) to provide information that under the laws of the requested Party is (i) subject to legal privilege or (ii) contains any trade, business, industrial, commercial or professional secret, or trade process, provided that information described in paragraph 4(a) of Article 5 of this Agreement shall not by reason of that fact alone be treated as such a secret or trade process; or

(b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Party under paragraph 4 of Article 5 of this Agreement.

For purposes of paragraph 2(a)(i), the term "information subject to legal privilege" means information that would reveal confidential communications between a client and an attorney, where such communications are made for the purpose of seeking or providing legal advice or for the purpose of use in existing or contemplated legal proceedings.

3. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.

4. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the requesting Party in the same circumstances. A provision of tax law, or connected requirement, will be considered to be

discriminatory against a national of the requested Party if it is more burdensome with respect to a national of the requested Party than with respect to a national of the requesting Party in the same circumstances. For purposes of the preceding sentence, a national of the requesting Party who is subject to tax on worldwide income is not in the same circumstances as a national of the requested Party who is not subject to tax on worldwide income. The provisions of this paragraph shall not be construed to prevent the exchange of information with respect to taxes imposed by the Parties on branch profits or on the premium income of foreign insurers.

5. The requested Party shall not be required to obtain and provide information which the requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration/enforcement of its own tax laws or in response to a valid request from the requested Party under this Agreement.

6. The statute of limitations of the requesting Party pertaining to the taxes described in paragraph 1 of Article 3 of this Agreement shall govern a request for information. The expiration of a statute of limitations for taxes of the requested Party shall not preclude the requested Party from obtaining and providing the requested information.

#### **ARTICLE 7 CONFIDENTIALITY**

Any information received by the requesting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the requesting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement, or to supervisory bodies, and only to the extent necessary for those persons, authorities or supervisory bodies to perform their respective responsibilities. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Information received by the requested Party in conjunction with a request for assistance under this Agreement shall likewise be treated as confidential in the requested Party. The information shall not be disclosed to any other person, entity, or authority, or used for any purpose other than for the purposes stated in Article 1, except in cases where the requested Party provides prior, written consent that the information may also be used for purposes allowed under the provisions of the existing Treaty on Mutual Legal Assistance in Criminal Matters between the Parties, signed on April 11, 1991, as it may be amended. In no event shall information provided under this Agreement be disclosed to another country without the prior express

written consent of the competent authority of the Party providing the information.

## **ARTICLE 8 COSTS**

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party and extraordinary costs incurred in providing assistance shall be borne by the requesting Party.

## **ARTICLE 9 MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

2. The competent authorities may adopt and implement procedures to facilitate the implementation of this Agreement, including such additional forms for the exchange of information as shall promote the most effective use of the information.

## **ARTICLE 10 MUTUAL ASSISTANCE PROCEDURE**

If both competent authorities of the Parties consider it appropriate to do so they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance, and jointly study non-compliance areas.

## **ARTICLE 11 ENTRY INTO FORCE**

The Parties shall notify each other when their necessary internal procedures for entry into force have been completed. This Agreement shall enter into force on the date of the later of such notifications. Upon entry into force, it shall have effect for requests made on or after the date of entry into force, with regard to taxable periods beginning on or after three years prior to the signature of this Agreement, to which the matter relates.

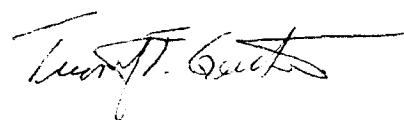
**ARTICLE 12  
TERMINATION**

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may terminate this Agreement by giving notice of termination in writing to the other Party. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of the notice of termination.
3. If a Party terminates this Agreement, notwithstanding such terminations, both Parties shall remain bound by the provisions of Article 7 of this Agreement with respect to any information obtained under this Agreement.

**IN WITNESS WHEREOF** the undersigned being duly authorized in that behalf by the respective Parties, have signed the Agreement.

**DONE AT** Washington, in duplicate, in the English and Spanish languages, each text being equally authentic, this 30th day of November, 2010.

**FOR THE GOVERNMENT OF  
THE UNITED STATES OF  
AMERICA**



**FOR THE GOVERNMENT OF  
THE REPUBLIC OF PANAMA**





EMBAJADA DE PANAMA  
WASHINGTON, D. C. 20008

NG-10-174

The Embassy of the Republic of Panama presents its compliments to the United States Department of State and has the honor to acknowledge receipt of the note dated today which reads as follows:

"The Department of State has the honor to refer the Embassy of the Republic of Panama to the Agreement between the Government of the United States of America and the Government of the Republic of Panama for the Exchange of Information Relating to Taxes ("the Agreement"), signed today, and to confirm on behalf of the Government of the United States the following understandings reached between our two Governments ("the Parties"):

1. With respect to subparagraph 1(a) of Article 3 (Taxes Covered) of the Agreement, it is mutually understood by the Parties that the term "all federal taxes" includes the following taxes imposed by the United States:

- (a) Federal income taxes;
- (b) Federal taxes related to employment;
- (c) Federal estate and gift taxes; and
- (d) Federal excise taxes.

2. With respect to subparagraph 1(b) of Article 3 (Taxes Covered) of the Agreement, it is mutually understood by the Parties that the term "all national taxes" includes the following taxes imposed by the Republic of Panama:

- (a) Income Tax
- (b) Real Estate Tax
- (c) Vessels Tax
- (d) Stamp Tax
- (e) Notice of Operations Tax
- (f) Tax on Banks, Financial and Currency Exchange Companies.
- (g) Insurance Tax

(h) Tax on the...

To the Honorable  
Embassy of the United State  
Of America  
Panama

- (h) Tax on the Consumption of Fuel and Oil Derivates
- (i) Tax on the Transfer of Movable Goods and the Provision of Services
- (j) Tax on the Consumption of certain Goods and Services
- (k) Tax on the Transfer of Immovable Goods

3. With respect to Article 9 (Costs) of the Agreement, it is mutually understood by the Parties that costs that would be incurred in the ordinary course of administering the domestic tax laws of the requested State shall be borne by the requested party when those costs are incurred for purposes of responding to a request for information. It is also mutually understood by the Parties that all other costs are considered extraordinary costs, and shall be borne by the requesting party. Examples of extraordinary costs include, but are not limited to, the following:

- (a) Fees charged by third parties for research and copying documents;
- (b) Fees for non-government counsel or experts appointed or retained, with the approval of the competent authority of the requesting Party, for litigation in the courts of the requested party related to a specific request for information;
- (c) Fees and expenses of a person who appears for an interview, deposition or testimony relating to a specific information request. The fees and expenses will be the ordinary amounts allowed under the laws of the party in which the interview, deposition or testimony is held or taken.

The competent authorities shall consult with each other in advance if extraordinary costs are likely to exceed \$1,000, or in the case of subparagraph (c) of this paragraph, \$100, in order to determine whether the requesting Party will continue to pursue the request and bear the cost.

4. The Government of the United States of America and the Government of Panama intend that the Agreement enter into force as soon as is practicable following the enactment of any legislation by Panama that is necessary under its domestic laws in order for Panama to comply fully with the terms of the Agreement. The Government of Panama expects that this legislation will be enacted before the end of 2011. As soon as practicable after such legislation has been enacted, the Government of the United States and the Government of Panama intend to take such actions, including exchange of notifications, as are necessary to cause the Agreement to enter into force in accordance with its terms.

5. The United States understands that, with respect to the necessary legislation referred to in paragraph 4, Panama intends to enact legislation requiring the identification of the owners of bearer shares. The United States further understands that such legislation:

- (a) Will require...

(a) Will require resident agents acting for Panamanian entities to obtain and maintain in their records information sufficient to identify the owners of those entities, even in cases in which shares of those entities are issued in bearer form, including, where the owner is a legal person, information sufficient to identify substantial owners of that legal person. For this purpose, a resident agent will not be required to obtain and maintain information sufficient to identify substantial owners of legal persons in cases where the resident agent acts for a professional client that is part of an organization that is required to maintain information on such entities and that has agreed to make available such information to the resident agent when requested;

(b) Will require resident agents to produce ownership and client identity information in their possession in response to a proper request under the Agreement, whether with respect to newly-formed entities or entities in existence at the time the legislation is enacted; and

(c) Will require resident agents to obtain such ownership information with respect to entities existing at the time the legislation is enacted within a five year period from the date of the enactment of the law.

6. It is mutually understood that under laws currently in effect, each party is authorized to obtain and exchange information, including information held by financial institutions and other fiduciaries, pursuant to a request under a tax information exchange agreement, regardless of whether the requested party has a domestic tax interest in such information.

7. Under section 274(h) of the U.S. Internal Revenue Code, an individual may deduct from income expenses incurred with respect to attendance at a conference or convention held in Panama in the same manner and to the same extent the individual would be permitted to deduct such expenses with respect to attendance at a conference or convention held in the United States, provided that there is in effect between Panama and the United States a tax information exchange agreement meeting the requirements of section 274(h)(6). It is mutually understood that the Agreement is intended to meet those requirements.

8. It is mutually understood that the entry into force of this Agreement does not prevent the Parties from discussing the possibility of an agreement for the avoidance of double taxation in the future.

The Department has the further honor to propose, on behalf of the Government of the United States of America, that the present note and the Embassy's affirmative reply thereto confirming that the Government of the Republic of Panama shares these understandings shall constitute an agreement between the two Governments on these points which shall enter into force on the same date as the Agreement."

The Embassy...

The Embassy of the Republic of Panama confirms that the proposal set forth in the Department's note is acceptable to the Government of the Republic of Panama and agrees that this note and the Department's note shall constitute an agreement between the two Governments that shall enter into force on the date of entry into force of the Agreement.

The Embassy of the Republic of Panama avails itself of this opportunity to renew to the United States Department of State the assurances of its highest consideration.

Washington, November 30, 2010.

